

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JAMEL DUNCAN,

Plaintiff,

- against -

THE CITY OF NEW YORK, et al.,

Defendants.

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MEMORANDUM
AND ORDER

11-CV-3826 (CBA) (JO)

James Orenstein, Magistrate Judge:

The defendants have moved for an award of costs, including reasonable attorney's fees, arising from two conferences on February 1 and 2, 2012, that did not proceed because the plaintiff failed to appear and because his retained counsel refused to proceed in his absence. *See* Docket Entry ("DE") 17 (minute entry for February 1 conference); DE 20 (corrected minute entry for February 2 conference); DE 19 (defendants' letter concerning bill of costs); DE 21 (same).

I initially expressed the view that some such relief was appropriate under the circumstances that then obtained: the plaintiff after having orally agreed to a settlement (*see* DE 13; DE 14), had purported to withdraw from that agreement and requested a conference with me (*see* DE 15); the defendants had requested enforcement of the oral agreement (*see* DE 16), and I had scheduled a conference to discuss the matter. *See* Order dated January 25, 2012 (scheduling conference for February 1); DE 17 (rescheduling conference for February 2 due to plaintiff's failure to appear on February 1). Under those circumstances, the plaintiff's failure either to appear in person or to agree to participate through counsel had caused the defendants' counsel to incur the costs of appearing twice in an unsuccessful attempt to be fully heard at a conference the plaintiff himself had requested.

Subsequent developments, however, have persuaded me that an award of costs is no longer appropriate. First, on March 6, 2012, following an appearance the previous day before Chief Judge

Amon, the defendants withdrew their opposition to the plaintiff's motion to vacate the settlement agreement and instead moved for judgment on the pleadings. DE 24. Had the defendants made that decision sooner, the conferences giving rise to the motion for costs would have been unnecessary. Second, on May 14, 2012, the court granted the defendant's motion for judgment on the pleadings and dismissed the Complaint. DE 35. The Clerk has issued a judgment in favor of the defendants and the case is now closed. *See* DE 36. Under such circumstances – where the plaintiff can recover no damages and the defendants have obtained an outcome more advantageous than the one they had hoped to secure at the abortive conferences in February – I conclude that an award of costs against the plaintiff would not serve the interest of justice. In reaching that conclusion, I need not and do not express any view as to either the propriety of the specific amount the defendants sought or the plaintiff's objections to that amount. *See* DE 22 (plaintiff's objections); DE 25 (same).

For the reasons set forth above, I deny the defendants' motion for costs, including reasonable attorney's fees, arising from their participation in conferences before me on February 1 and 2, 2012.

SO ORDERED.

Dated: Brooklyn, New York
May 30, 2012

/s/
JAMES ORENSTEIN
U.S. Magistrate Judge